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COMMISSION ON HUMAN RIGHTS
Fiftieth session
Item 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Written statement submitted by International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1994]

State of emergency and administration of justice in Northern Ireland

1. The International Federation of Human Rights (IFHR) and its Northern Ireland correspondent, the Committee on the Administration of Justice (CAJ), remain concerned about a number of human rights issues in Northern Ireland which are closely linked to the Government-declared state of emergency and which also concern the protection of lawyers.

2. These issues have been the subject of comment at the Human Rights Committee in April 1991, the Committee against Torture in November 1991, the Sub-Commission in August 1992, the Commission on Human Rights in February 1993 and the Sub-Commission on Prevention of Discrimination and Protection of Minorities in August 1993. Furthermore, the European Committee for the Prevention of Torture carried out an ad hoc visit to Northern Ireland in July 1993.

3. The IFHR and the CAJ are concerned at the lack of an appropriate response from the United Kingdom Government to these issues and are further concerned that it appears that criticism is often met with an attempt to deflect attention from its own violations by highlighting the ongoing problem of politically motivated violence by illegal organizations in Northern Ireland. Unlike the United Kingdom Government these illegal organizations make no claim to be adhering to international human rights standards. The IFHR and the CAJ are firmly convinced that abuses of human rights, particularly in relation to threats against lawyers, the ill-treatment of detainees and extrajudicial killings, can have no part to play in the creation of a more just and peaceful society.

Access to legal advice and the situation of lawyers

4. Detainees held under emergency legislation in Northern Ireland can be kept incommunicado for up to 48 hours. They can be denied access to their lawyers for up to an initial period of 48 hours and for further periods of 48 hours thereafter. Detainees can be held for up to seven days without being brought before a court. This power has been found to be in breach of the European Convention on Human Rights and the United Kingdom Government has issued a notice of derogation from both the Convention and International Covenant on Civil and Political Rights in respect of the power to detain.

5. The IFHR and the CAJ are particularly concerned at the domestic laws governing access to lawyers which clearly contravene paragraph 8 of the Basic Principles on the Role of Lawyers. This provides that "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials." In Northern Ireland police officers may be both within the sight and hearing of legal consultations. In the rest of the United Kingdom detainees arrested under the same emergency legislation can have their lawyer present while they are being interviewed. In our view such differential access to justice cannot be acceptable and indicates an official hostility and distrust of legal defenders in Northern Ireland.

6. This is all the more worrying given that detainees continue to report that police officers make derogatory comments and threats against the lives of their lawyers. This problem has been referred to in the 1992 and 1993 reports of the Special Rapporteur of the Sub-Commission on the independence of the judiciary and the protection of practising lawyers.

7. The United Kingdom Government, in response to the written statement by the IFHR to the Sub-Commission in August 1993 and to the oral intervention by the International Commission of Jurists, stated that "as yet no factual information has been presented to substantiate these allegations". This is not the case. There is already a substantial body of evidence in the public domain. The Government went on to say that if "any organization holds information which is relevant it should be handed over to the police immediately for investigation". It is the view of the IFHR and the CAJ that a police investigation into serious allegations of police misconduct is unlikely to get to the truth or to assuage public concern. The independent

expert from the United Kingdom on the Sub-Commission suggested in her comments at the 1993 session that the police justification for non-investigation of allegations of police misconduct in relation to lawyers was misguided and that they had a duty to investigate.

8. Related to these allegations of threats against lawyers is the as yet unsolved 1989 murder of defence lawyer Patrick Finucane. There is strong evidence of official collusion in Mr. Finucane's death which indicates the involvement of an undercover army intelligence officer, Mr. Brian Nelson.

9. During the Sub-Commission's proceedings in 1992 the expert from the United Kingdom also called for an independent inquiry, a call she repeated at the 1993 session of the Sub-Commission. As yet the United Kingdom Government has failed to institute such an inquiry. In their response to the written statement by the IFHR at the 1993 Sub-Commission the Government stated, "we are naturally looking at all the implications of the Nelson case. Nobody underestimates the seriousness of what occurred. Any lessons will be learned and applied." While this matter was referred to the Director of Public Prosecutions some time ago to date no action has been taken concerning Mr. Nelson's involvement in the death of Patrick Finucane. The IFHR and the CAJ remain seriously concerned at the apparent inaction in relation to the investigation of this death and reported the case to the Special Rapporteur on extrajudicial, summary or arbitrary executions in November 1993.

Safeguards to prevent ill-treatment of detainees

10. The Government have as yet failed to implement comprehensive and effective safeguards to prevent the physical and psychological ill-treatment of detainees held under emergency legislation. In 1978 the European Court of Human Rights found in the case of Ireland v. United Kingdom that the United Kingdom was subjecting detainees to inhuman and degrading treatment in Northern Ireland. In 1991 the United Nations Committee against Torture looked at renewed allegations of ill-treatment and was concerned at the absence of effective safeguards to prevent ill-treatment. In particular, IFHR and the CAJ remain concerned at the Government's continued reluctance to introduce audio and video recording of interviews. Such a system would provide a record of events, and protect both detainees and police officers. The Independent Commission for Police Complaints in Northern Ireland has called for such a system. In the last five years it has been unable to substantiate a single complaint concerning ill-treatment of detainees held under emergency legislation in Northern Ireland.

11. In December 1992 the United Kingdom Government appointed an independent commissioner with powers to visit the holding centres and it has recently produced a code of practice concerning the detention of people held under the emergency legislation. While welcome, the IFHR and the CAJ are of the view that these fall far short of the required safeguards. In particular, as well as the urgent need to introduce audio and video recording of interrogations, lawyers should be allowed to attend interrogations as is the case everywhere else in the United Kingdom. More recently, in July 1993 the European Committee for the Prevention of Torture made an ad hoc visit to

Northern Ireland to examine the situation of detainees. The IFHR and the CAJ very much hope that the United Kingdom Government will agree to the publication of the report on their visit.

The use of lethal force

12. The IFHR and the CAJ remain concerned that police and soldiers in Northern Ireland have been responsible for killing some 350 people since 1969. There is particular concern at the consistent lack of accountability in relation to these deaths. Only some 33 prosecutions have been brought and only 4 have resulted in convictions.

13. Decisions regarding whether or not to prosecute are characterized by long delays. The recent court case concerning the killing of an unarmed civilian, Fergal Carraher, illustrates the difficulty in obtaining convictions. The decision not to prosecute in the case of Pearse Jordan, an unarmed member of the IRA, in spite of eyewitness evidence gathered by IFHR and CAJ which strongly suggests that he could have been arrested, highlights the problems with the law on the use of lethal force in the United Kingdom.

14. The IFHR and the CAJ believe that there should be a comprehensive inquiry into the law on the use of lethal force and the investigation of extrajudicial killings. This should measure existing law and practice against internationally agreed standards such as the European Convention on Human Rights, the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. IFHR and the CAJ have recently asked the Special Rapporteur on extrajudicial, summary or arbitrary executions to consider these issues in the light of three particular deaths.

15. In conclusion, the IFHR and the CAJ respectfully request the Commission to urge the United Kingdom Government to ensure that its laws and the actions of its security forces in Northern Ireland fully comply with its responsibilities in international human rights law.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1994]

Situation of human rights in Peru

1. The International Federation of Human Rights (FIDH) and its affiliate, the Asociación Pro Derechos Humanos (APRODEH), are of the opinion that, despite some improvement in the statistics for the internal war being waged in Peru, the situation in that country continues to be one of the most serious and violent in Latin America. In 1993 there were 87 reported cases of arrest and disappearance, of which 60 have still to be clarified. Although the numbers are considerably lower than in 1992 (386 cases), the situation remains alarming. In 1993 a total of 1,289 incidents involving armed groups were recorded, 336 fewer than the 1,625 recorded in 1992. The number of victims of political violence, however, remained high. There were 1,021 deaths and 745 people were injured; of those who died 868 were members of the security forces and civilians, while 153 were subversives. Of the injured, 734 are members of the security forces and civilians while 11 are subversives.

2. This decline in casualties is due to decreased activity on the part of the armed groups Sendero Luminoso and Movimiento Revolucionario Tupac Amaru (MRTA) rather than to any significant overall change in the approach or practice of the State. In September 1992 Abimael Guzmán Reinoso was arrested, along with other leaders of the Sendero Luminoso. Arrests of the movement's top commanders continued in 1993. An even more serious reverse was suffered by the MRTA, almost all of whose leaders are behind bars. This organization saw its front-line forces decimated by arrests or the surrender of its conscripts to the army.

3. Starting in September 1993, a series of letters from Abimael Guzmán Reinoso to President Fujimori, calling for the opening of peace negotiations, were made public. In its campaign for the referendum on a new constitution the Government sought to claim that these letters proved the success of its counter-insurgency strategy. It seems fairly clear that there is also a debate over the contents of the letters within Sendero Luminoso itself; what is quite certain, however, is that, while most Sendero Luminoso prisoners fell in with their leader's position, subversive activity continued, and even increased in December, despite the fact that there was not a single public indication of a serious split within the ranks of Sendero Luminoso. A total of 36 subversive incidents were recorded in November and 43 up until 28 December.

4. While the Government declares that the activity of subversive groups is practically at an end, the facts seem to point in a different direction: the militarization of Peruvian society has not halted or slackened, but continues its course. In a recent press article Enrique Bernales, a former senator and former Chairman of the Commission on Human Rights, summed up the situation in the following question: "If violence is decreasing ... why are more emergency zones being declared? Other questions that could be asked are why arbitrary arrests, disappearances and extrajudicial executions are still taking place; why the essentials of anti-terrorist legislation which violates elementary principles such as the right of due process are still in force; and why there is still impunity for the military in cases of proven responsibility for flagrant violations of human rights.

5. At the end of April 1993 the country was shocked by a statement from General Rodolfo Robles, Chief of Staff, revealing that within the Peruvian army there was an operational group specializing in undercover operations, which was responsible for various cases of disappearances and extrajudicial executions. His statement merely confirmed earlier claims made in various publications put out by secret groups of army officers. According to these varied sources the operational group was at the very least responsible for the following incidents:

(a) The abduction and disappearance of nine students and one professor of the Universidad Nacional de Educación - La Cantuta on 18 July 1992;

(b) The killing of 16 people, including a five-year-old boy, in Huanta St., Barrios Altos, Lima, in 1991;

(c) The abduction and disappearance of Pedro Yauri, a journalist working for Radio Universal (Huacho), on 24 June 1992;

(d) The abduction and disappearance of nine people from various parts of the village of Santa, Ancash, on 2 May 1992;

(e) The abduction and disappearance of 30 students of the Universidad Nacional del Centro during the last two years. Also, according to the journal Caretas, the group was responsible for the abduction and disappearance, in Tingo María, Huánuco, in April 1989, of Guillermo Segundo López Salazar, a journalist, who had exposed links between members of the army and drug traffickers.

General Robles' statement indicated that the group was led by Major Santiago Martín Rivas, who answered to the presidential adviser Vladimiro Montesinos and to Generals Juan Rivero Lazo and Luis Pérez Documet and operated with the full approval of General Nicolás de Bari Hermoza, Commander-in-Chief of the Army.

6. These statements were taken up by human rights organizations, the independent communication media and opposition members of parliament, but were strenuously denied by the Government and its spokesmen. Indeed, a report concerning the La Cantuta case absolving the military from all responsibility was approved by the official majority in Congress. At the same time army tanks came out on to the streets to demonstrate support for General Hermoza and scare off any move to investigate the cases reported. The discovery of mass graves (Cieneguilla and "La Atarjea"), however, in which the bodies of those disappeared in the La Cantuta case were buried, gave events a new turn. Gradually the pressure of national and international public opinion, and the incontrovertibility of the discoveries, led the Government to recognize that the matter could justifiably be examined by the military courts, on the grounds that it related to an operational offence. An argument is currently taking place before the country's Supreme Court over who should try the case. Although Judge Carlos Magno Chacón has been strongly challenged as being implicated in the acquittal of drug traffickers and as having likely connections with the National Intelligence Service, he has been put in charge of the case. He stood as a candidate in the latest municipal elections as part of a group supporting the Fujimori Government.

7. Following the reports by human rights organizations the United States Congress drew up a list of the 12 principal cases of human rights violations that could be laid at the door of the armed forces or the police: the prison massacre, the Cayara massacre, the murder of the journalist Bustíos, the murder of the lawyer Fernando Mejía E., the murder of four peasants in Vilcashuamán and 16 in Iquicha, the abduction and disappearance of four community members in Chuschi, the murder of three students in Callao, the murder of two prisoners at a police station in Cusco-Chumbivilcas, the massacre in Santa Bárbara, the killings in Barrios Altos, and the arrest, disappearance and murder of at least 30 students in the city of Huancayo. These cases, together with the La Cantuta case of 1992, make up what could well be called the impunity list. In the majority of these cases there has not even been any open investigation process, while in others the investigation ended without any indication of who was responsible; and as and when any sentence was imposed by the military or police authorities it was scandalously lenient or was restricted to lower-ranking personnel.

8. Following the coup d'état of 5 April 1992 a series of laws were passed, making up a body of anti-terrorist legislation which clearly ran counter to a whole range of universal legal standards such as the right of due process. Minor amendments introduced in 1993 did nothing to alter this basic characteristic. The number of arbitrary arrests in Peru has risen. Supervision by the government procurator's office has been reduced to a minimum, with the investigation process basically being carried out by the police and the armed forces. Persons accused of terrorism are tried by military courts where defence lawyers - if any - are denied the most basic conditions for carrying out their work. Convictions are imposed with great speed and the provision permitting people under 18 to be tried for terrorist offences (or "treason to the fatherland") still stands.

9. In this context, the Repentance Act brought in by the Government is an instrument not to create peace but to extend repression indiscriminately. The Act encourages any prisoner to inform on innocent people in exchange for his own freedom. The torture and rape of prisoners are still routinely carried out by the forces of law and order. The daily newspaper La República of 31 October 1993 reported an accusation by two university students, the brothers Luis Alberto and Luis Fernando Cantoral Benavides. In March 1993 the Attorney-General of the Nation ordered a junior prosecutor to charge Major Coquis Cox with the torture of 12 peasants in San Ignacio. To date the matter has not been settled, but the major has been promoted.

10. As an indication of the fact that in 1993, despite the fall in the number of victims of repressive State violence, military activity which violates human rights is still taking place, we set out some recent cases below:

At least nine people from the village of Angasmarca, Santiago de Chuco, La Libertad, were killed by a military patrol in the first week of March 1993;

On 12 October 1993 an army patrol from Antabamba carried out a joint operation in Apurímac with members of the Pachaconas Civil Defence Committee. They arrested and tortured six people in Habas Corral: Jaime Rolando Velásquez Alarcón was found dead with signs of torture and various mutilations;

In August 1993 Teófilo Núñez Quispe was abducted and disappeared in Huancayo after applying for a writ of habeas corpus against the General who is Police Chief following the disappearance of his brother, Camilo. The family has accused members of the Regional Intelligence Office of responsibility for this.

11. In the light of the foregoing, we consider that the Peruvian Government should continue to be denounced to the international community for systematic violations of human rights, and we urge the Commission to establish a procedure that could be applied to this situation under agenda item 12.

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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[3 February 1994]

Situation of human rights in Zaire

1. The International Federation of Human Rights (FIDH) and its affiliated organization, the Ligue Zairoise des Droits de l'Homme (LZDH), note with concern that there has been a sharp divergence in Zaire from respect for human rights. Insecurity is virtually institutionalized in the country. Daily reports appear in the press of killings, theft, rape, brutality against civilians and looting of premises by men in uniform.

2. Especially serious is the increase in arbitrary executions. These occur particularly in the context of confrontations between the country's various ethnic groups. Since early 1993, these clashes have resulted in the death of over 1,000 persons in the provinces of Kivu and Shaba and have led to the mass exodus of over 1 million men, women and children, who are living in conditions

of utter deprivation. Entire villages have been burnt, thousands of homes destroyed and vast herds of livestock decimated. According to a number of accounts, soldiers have joined in with their fellow believers, according to the tribe they belong to, and directed attacks against enemy villages, in both camps. It should be noted that, in Kivu, the arrival of troops of the Special Presidential Division (DSP), sent by the Birindwa Government to pacify the region, reduced the level of hostilities considerably. Nevertheless, the presence of those troops has added to the growing destitution suffered by the population because of racketeering perpetrated against it by the military. In Shaba, people of Kasaï origin are being subjected to a veritable "ethnic cleansing" programme, for which the province's public authorities are directly responsible. The provincial Governor, Mr. Kyungu, uses public radio and television to broadcast messages of incitement to tribal hatred. This programme is being conducted in appalling ways. Promiscuity in transit camps and the lack of health equipment, foodstuffs and medicine have resulted in an extremely high mortality rate among the displaced populations (in May 1993, 10 children died per day on average in the Likasi camp alone). The conditions in which people are being transferred to their provinces of origin are inhuman. Refugees are crammed into wagons like cattle and even piled on the tops of them. The dozens of deaths in each convoy are to be deplored. Moreover, no reception facilities have been arranged by the Government for refugees. Some local and foreign organizations (Médecins Sans Frontières, OXFAM, ICRC and so on) have been showing remarkable dedication in trying to make up for these further shortcomings on the part of the Zairian Government authorities.

3. A number of arbitrary executions are directly attributable to members of the Zairian armed forces. The indiscipline of uniformed personnel, which is tolerated at the highest Government level, has led them to acts of killing, banditry and destruction of the country's economic and social infrastructure. In Kinshasa, garrison troops, objecting that their January 1993 pay was in "demonetized" 5 million Zaire notes, set about looting and killing throughout the capital from 28 January to 2 February. At the time of the abortive meeting of the Union for Democracy and Social Progress (UDPS) on 4 July 1993, the army killed four members of that party and wounded dozens of others by gunshots. On Monday, 20 September 1993, Mr. Mbayi Kalombo, the security adviser to the Prime Minister Etienne Tshisekedi, received a bullet wound in the right knee and stab wounds in the left side of his head and his right hand when attacked by four armed and hooded men, one of whom was in military uniform. At Kananga (Kasaï occidental), troops of the Birindwa Government resorted to looting in November 1993 to enforce the new banknote. These strong-arm tactics resulted in the deaths of several persons, including clerics.

4. The number of disappeared persons in Zaire is extremely hard to determine because there are no registration books in detention centres. The lack of this type of document is a flagrant contravention of rule 7 of the Standard Minimum Rules for the Treatment of Prisoners. Conditions of detention in Zaire are utterly alarming in general: torture and ill-treatment appear to be common practice; detainees are usually deprived of food and medical care.

5. Arbitrary detention is a widely practised method of intimidation. The presidential cells in Tshatshi camp in Kinshasa, for example, are still holding the survivors of the group of soldiers unwillingly implicated in a bogus plot called the "Voice of Zaire coup d'état", which took place in January 1992. Those involved are privates second class Kandolo, Mulumba, Kanyinda and Mateso, corporals Lihuya, Mangili and Edumba and private first class Monga. The Government is still refusing to hear their appeal. Under the Birindwa Government, the political police arrested a number of persons in early April for offences of opinion. They included political figures, journalists and trade unionists. They were all released on remand in July and September 1993. In addition, Mr. Ferdinand Chimanuka, the provincial chairman of the Social Christian Democrat Party (PDSC), abducted at about 5 p.m. on 23 October 1993 by men in uniform at Bukavu (South Kivu province), was placed in a civil guard jail. Transferred to Kinshasa the day after his arrest, he is now being held in the central prison of Malaka without having been brought before a judge. The authorities accuse him of having called upon the people of South Kivu to oppose the currency reform initiated by the Birindwa Government.

6. Freedom of association and opinion is still curbed in Zaire. When Mr. Mobutu and his supporters hold people's assemblies throughout the territory, provincial governors and military chiefs deny opposition political parties the right to organize public meetings. In addition, access to the official media (radio and television) is still banned to all political parties which do not support President Mobutu. The independent press, in Kinshasa as well as in the interior, is subjected to numerous attacks. Journalists have been detained in political police cells and at the central prison of Malaka without regard for legal procedure. Examples are Mr. Kenge Mukengeshayi, arrested on 24 April 1993, Mr. Kandolo Mulumba, arrested on 28 April 1993, and Mr. Kibel Bel Oka Nicaise, Mr. Kabuya Dikateta and Mr. Kalala Mbenga, arrested on 21 September 1993. On 4 August 1993, the daily Le Palmarès was suppressed. On 26 October 1993, the Minister of Communications of the Birindwa Government issued a ministerial order banning the appearance, for three months, of the daily Umoja and its supplement La Renaissance. In addition, free circulation of newspapers whose publication has not been officially banned is regularly hampered. In Shaba, for example, the governor, Mr. Kyungu, banned the circulation of newspapers published in Kinshasa. On several occasions, soldiers of the DSP and the Military Action and Intelligence Service (SARM) tried to drive out the capital's small news-vendors; they confiscated and tore up publications which offended the Government.

7. With regard to the situation of economic, social and cultural rights, the conditions of the population are worsening dramatically. Lacking any management mechanism, the currency reform initiated by the Birindwa Government is plunging the country into a price-rise spiral never before experienced. The price of all ordinary consumer goods goes up 10 or 20 times from one day to the next. At the same time, a threat of imprisonment issued by Mr. Birindwa hangs like the sword of Damocles over anyone who would dare to criticize or oppose his reform. There is no coherent policy on food, housing and health. Malnutrition is leading to a rising death rate in Zaire, made worse by the cruel shortage of primary health care. The lack of drinking water almost everywhere throughout the interior, and even in certain parts of the capital, makes living conditions increasingly precarious and is causing

cholera and dysentery outbreaks. AIDS, onchocerciasis and, above all, malaria continue to spread. The vast majority of Zairians are jobless. Of 40 million inhabitants, 15 million of whom are of working age, fewer than 5 million have regular work or receive pay at fixed times. Nor do Zairians have any social insurance cover, since the official body for that purpose, the National Social Security Institute, is bankrupt.

8. The right to education is seriously violated. Thousands of children have been unable to attend school this year because they cannot pay school fees. The latter are set in foreign currency in private schools, and this means that many parents, who are unemployed, are unable to meet such expenses. The backlog in teachers' pay (over eight months of arrears) completely disrupted the progress of the 1992-1993 school year.

9. In view of this situation, which in itself shows the extent of the human rights violations suffered by the Zairian people, but also contains the seeds of a much steeper deterioration, particularly as a result of inter-ethnic clashes, FIDH and LZDH appeal to the Commission on Human Rights to step up, as a matter of urgency, the monitoring of the situation of human rights in Zaire by appointing a special rapporteur, under agenda item 12.